

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.93 OF 2006
IN
TESTAMENTARY PETITION NO.303 OF 1993

Mr Burjor S. Shroff

...Petitioner

v/s

Mr Behram J. Mistry and ors.

...Respondents

Dr Mrs R.R. Ajinkya for Petitioner.
Respondent No.1 present in person.

CORAM : D.K. DESHMUKH J.
DATE : 19TH OCTOBER 2006.

P.C.

:-

1. This is a notice of motion taken out by the respondent no.1 for dismissal of the petition because it has not been verified in the manner provided by the O.S. Rules as also under section 280 of the Indian Succession Act. According to the respondent No.1, the present petition has been filed for probate of the will left behind by the deceased Mrs Alamai Burjorji Balsara. According to the respondent No.1, a petition for probate of the will is required to be filed as per the provisions of rule 374 of the O.S. Rules in Form 97. Form 97 gives form of verification which reads as under

:-

"I _____, the petitioner abovenamed do swear in the name of God _____ (solemnly affirm) that what is stated in paragraphs _____ is true to my own knowledge and that what is stated in the remaining paragraphs is stated on information and belief and I believe the same to be true (Sworn / Solemnly affirmed at ____ this ____ day of _____ 20__."

. Perusal of the above quoted form shows that

the person who is verifying the petition has to state that not only the contents are true either to his knowledge or to his information and belief but he is also required to state that he believes those averments to be true. According to the respondent No.1, the verification clause of the petition does not state that the person who is verifying the petition believes the contents of the petition to be true. The respondent No.1 also relies on section 280 of the Indian Succession

Act 1925 which reads as under :-

"280. Petition for probate etc. to be signed and verified :- The petition for probate or letter of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely -

'I (A.B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.'"

. Perusal of the above section also shows that this also requires the person who is verifying the petition to state that he believes the contents to be true. The verification clause of the present petition

reads as under :-

"We (1) Arnavaz alias Dolly Shiavak Shroff, (2) Shiavak Erachshaw Shroff, residing at New Bhraman Alli, Shree Ganesh Co-op. Housing Society, Neral, Raigadh, District Maharashtra and at present residing at Almeida House, Off Hill Road, Chinchpokli Lane, Bandra, Bombay and (3) Burjor Shiavak Shroff, residing at Almeida House, Off Hill Road, Chinchpokli Lane, Bandra, Bombay 400 050, the petitioners abovenamed do hereby solemnly declare in the name of God that what is stated in the foregoing petition is true to our own knowledge."

. This notice of motion was taken out in September 2006. The petitioners have filed reply. The only explanation given by the petitioners is that the verification clause is as per the rules. It becomes clear from perusal of the Form 97 and section 280 of the Indian Succession Act 1925 that the verification clause of the petition does not strictly comply with the requirement of Form 97 and also section 280. The learned counsel appearing for petitioners then submits that the petitioners have taken out a chamber summons being chamber summons No.72 of 2006. In the said

chamber summons, the petitioners have made a prayer for being permitted to redeclare the petition. Perusal of that chamber summons however shows that the new declaration that the petitioners want to incorporate in the petition is not given. The only amendment sought is deletion of the names of petitioner Nos.1 and 2. It is true that if any defect is pointed out in the verification clause, it is capable of being cured by amendment. Therefore, as soon as defect was pointed out, had the petitioners been keen on prosecuting this petition, they would have taken necessary steps for amending the verification clause. The petitioners have not done it. According to the respondent No.1, the petitioners have deliberately not worded the verification clause as required under the O.S. Rules and section 280 of the Indian Succession Act 1925 because they have made false statements in the petition which they also believe not to be true and therefore, to avoid prosecution of perjury, they have deliberately worded the verification clause which does not state that the petitioners believe contents to be true. As I find that the verification clause of the petition is defective and as the petitioners have not taken any steps to cure that defect though they had time at their disposal to do so, I have no option but to dismiss the petition. The petition is therefore dismissed. The respondent No.1 who appears in person states that he

does not press for other reliefs which are claimed in
this motion. Notice of motion is disposed off.

. Parties to act on the copy of this order duly
authenticated by the Associate / Private Secretary as
true copy.

. Certified copy expedited.
